

STATE: MINNESOTA
Effective: July 1, 1999
TN: 99-12
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26. Personal care services. (continued)

registered nurse or a mental health professional defined in item 6.d.A. of this attachment;

d) is not a consumer of personal care services;
and

e) is subject to criminal background checks and procedures specified in the state human services licensing act. ~~An individual who has been convicted of a crime that disqualifies persons for licensure or employment pursuant to state rule governing home care licensure, or a comparable crime in another jurisdiction, is disqualified from being a personal care assistant, unless the individual meets the rehabilitation criteria specified in the Minnesota home care licensure rule.~~

- Effective July 1, 1996, personal care provider organization means an entity enrolled to provide personal care services under medical assistance that complies with the following:

a) owners who have a five percent interest or more, and managerial officials are subject to a background study. This applies to currently enrolled personal care provider organizations and those entities seeking to enroll as a personal care provider organization. Effective November 10, 1997, an organization is barred from enrollment if an owner or managerial official of the organization has been convicted of a crime specified in the state human services licensing act, or a comparable crime in another jurisdiction, unless the owner or managerial official meets the reconsideration criteria specified in the state human services licensing act;

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- b) the organization must maintain a surety bond and liability insurance throughout the duration of enrollment and provide proof thereof. The insurer must notify the Department of the cancellation or lapse of policy; and
- c) the organization must maintain documentation of personal care services as specified in rule, as well as evidence of compliance with personal care assistant training requirements.

B. Fiscal agent option

Under this option, the recipient and consulting professional do not require professional delegation. An individual may be both a consulting professional and a qualified professional.

● The recipient or responsible party:

- a) uses a fiscal agent, not a personal care provider organization. A fiscal agent assists the recipient to account for covered personal care assistant services. A fiscal agent is considered a joint employer of the qualified professional described in item A, the consulting professional described below, and the personal care assistant, and may not be related to the recipient, consulting professional, or personal care assistant. A fiscal agent or owner of the entity providing fiscal agent services must pass a criminal background check according to the state human services licensing act;
- b) uses a consulting professional (for the purposes of this item, a person meeting the qualifications for qualified professional described in item A) for help in developing and revising a plan to meet the recipient's assessed needs and for help in supervising the personal care assistant services in areas that require professional delegation, as determined by a public health nurse;

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- c) supervises the personal care assistant if there is no qualified professional;
- d) with the fiscal agent, hires and terminates the consulting professional;
- e) with the fiscal agent, hires and terminates the personal care assistant;
- f) orients and trains the personal care assistant in areas that do not require professional delegation as determined by the county public health nurse;
- g) supervises and evaluates the personal care assistant in areas that do not require professional delegation as determined in the assessment;
- h) cooperates with the consulting professional or qualified professional and implements recommendations pertaining to the health and safety of the recipient;
- i) with the fiscal agent, hires a qualified professional to train and supervise the performance of delegated tasks done by the personal case assistant;
- j) monitors services and verifies in writing the hours worked by the personal care assistant and the consulting professional or qualified professional;
- k) develops and revises a care plan with assistance from the consulting professional or qualified professional;
- l) verifies and documents the credentials of the consulting professional or qualified professional; and
- m) together with the fiscal agent, consulting professional or qualified professional, and personal care assistant, enters into a written agreement before services begin. The agreement

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must include:

- 1) the duties of the recipient, fiscal agent, consulting professional or qualified professional, and personal care assistant;
- 2) the salary and benefits for the consulting professional or qualified professional and personal care assistant;
- 3) the administrative fee of the fiscal agent and services paid for with that fee, including background checks;
- 4) procedures to respond to billing or payment complaints; and
- 5) procedures for hiring and terminating the consulting professional or qualified professional and personal care assistant.

The fiscal agent:

- a) enrolls in medical assistance;
- b) requests and secures background checks on consulting professionals, qualified professionals and personal care assistants according to the state human services licensing act;
- c) bills for personal care assistant and consulting professional or qualified professional services;
- d) pays the consulting professional or qualified professional and personal care assistant based on actual hours of services provided;
- e) withholds and pays all applicable federal and state taxes;

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- f) makes the arrangements and pays unemployment insurance, taxes, workers' compensation, liability insurance, and other benefits, if any;
- g) verifies and documents hours worked by the consulting professional or qualified professional and personal care assistant; and
- h) ensures arm's length transactions with the recipient and personal care assistant.

At a minimum, consulting professionals visit the recipient in the recipient's home at least once every year. Consulting professionals and qualified professionals:

- a) report to the county public health nurse concerns relating to the health and safety of the recipient; and
- b) report to the appropriate authorities any suspected abuse, neglect, or financial exploitation of the recipient.

As part of the assessment and reassessment process in item 6.d.B. of this attachment, the following must be met to use, or continue to use, a fiscal agent:

- a) the recipient must be able to direct the recipient's own care, or the responsible party for the recipient must be readily available to direct the care of the personal care assistant;
- b) the recipient or responsible party must be knowledgeable of the health care needs of the recipient and be able to effectively communicate those needs;
- c) the recipient cannot receive shared personal care services (shared services); and
- d) a service update cannot be used in lieu of an annual reassessment.

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Authorization to use the fiscal agent option will be denied, revoked, or suspended if:

- a) the public health nurse or consulting professional determines that use of this option jeopardizes the recipient's health and safety;
- b) the parties do not comply with the written agreement; or
- c) the use of the option results in abusive or fraudulent billing.

The recipient or responsible party may appeal this decision. A denial, revocation or suspension will not affect the recipient's authorized level of personal care assistant services.

- Personal care services cannot be provided by parents of adult recipients, ~~adult~~ children, or ~~adult~~ siblings of the recipient, unless these relatives meet one of the following hardship criteria and the Department waives this requirement:
 - a) the relative resigns from a part-time or full-time job to provide personal care for the recipient;
 - b) the relative goes from a full-time job to a part-time job with less compensation to provide personal care for the recipient;
 - c) the relative takes a leave of absence without pay to provide personal care for the recipient;
 - d) the relative incurs substantial expenses by providing personal care for the recipient; or
 - e) because of labor conditions, special language needs, or intermittent hours of care needed, the relative is needed in order to provide an adequate number of qualified personal care assistants to meet the medical needs of the

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recipient.

- Under no circumstance may a hardship waiver be granted if the relative is the recipient's legal guardian.

Amount, duration and scope of personal care services:

- Department prior authorization is required for all personal care services and ~~effective January 1, 1996, for registered nurse~~ supervision. Prior authorization is based on the physician's orders; the recipient's needs, diagnosis, and condition; an assessment of the recipient; primary payer coverage determination information as required; the service plan; and cost effectiveness when compared to other care options. The Department may authorize up to the following amounts of personal care service:
 - a) up to 2 times the average number of direct care hours provided in nursing facilities for the recipient's comparable case mix level;
 - b) up to 3 times the average number of direct care hours provided in nursing facilities for recipients with complex medical needs, or who are dependent in at least seven activities of daily living and need either physical assistance with eating or have a neurological diagnosis;
 - c) up to 60 percent of the average payment rate for care provided in a regional treatment center for recipients who exhibit, or that without supervision, observation, or redirection would exhibit, one or more of the following behaviors:
 - 1) self-injury;
 - 2) physical injury to others; or
 - 3) destruction of property;

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- d) up to the amount medical assistance would pay for care provided in a regional treatment center for recipients referred by a regional treatment center preadmission evaluation team; or
 - e) up to the amount medical assistance would pay for facility care for recipients referred by a preadmission screening team; and
 - f) a reasonable amount of time for the provision of ~~nursing~~ supervision of personal care services.
- Department prior authorization is also required if more than two reassessments to determine a recipient's need for personal care services are needed during a calendar year.
 - Personal care services must be prescribed by a physician. The service plan must be reviewed and revised as medically necessary at least once every 365 days.
 - For personal care services
 - a) effective July 1, 1996, the amount and type of service authorized based upon the assessment and service plan will follow the recipient if the recipient chooses to change providers;
 - b) effective July 1, 1996, if the recipient's medical need changes, the recipient's provider may request a change in service authorization; and
 - c) as of July 1, 1998, in order to continue to receive personal care services after the first year, the recipient or the responsible party, in conjunction with the public health nurse, may complete a service update on forms developed by the Department. If a service update is completed, it substitutes for the annual reassessment described in item 6.d.B. of

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this attachment.

- All personal care services must be supervised by ~~a registered nurse~~ as described in this item. A reasonable amount of time for the provision of ~~nursing~~ supervision shall be authorized.
- Personal care services are provided for recipients who live in their own home if their own home is not a hospital, nursing facility, intermediate care facility for the mentally retarded (ICF/MR), institution for mental disease, or licensed health care facility.
- Recipients may use approved units of service outside the home when normal life activities take them outside the home and when, without the provision of personal care, their health and safety would be jeopardized. Effective July 1, 1996, total hours for personal care services, whether performed inside or outside a recipient's home, cannot exceed that which is otherwise allowed for personal care services in an in-home setting.

Effective July 1, 1998, to receive personal care services at school, the recipient or responsible party must provide written authorization in the recipient's care plan identifying the chosen provider and the daily amount of services to be used at school.

- Recipients may receive shared ~~care~~ personal care services (shared services), defined as providing personal care services by a personal care assistant to two or three recipients at the same time and in the same setting. For purposes of this item, "setting" means the home or foster care home of one of the recipients, or a child care program in which all recipients served by one personal care assistant are participating, which has state licensure or is operated by a local school district or private school. The provider must offer the recipient or responsible party the option of shared ~~care~~ services;

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if accepted, the recipient or responsible party may withdraw participation in shared ~~care~~ services at any time.

In addition to the documentation requirements for personal care provider service records in state rule, a personal care provider must meet documentation requirements for shared ~~care~~ services and must document the following in the health service record for each recipient sharing ~~care~~ services:

- a) ~~authorization permission~~ by the recipient or responsible party for the maximum number of shared ~~care~~ services hours per week chosen by the recipient;
- b) ~~authorization permission~~ by the recipient or responsible party for personal care assistant services provided outside the recipient's home;
- c) ~~authorization permission~~ by the recipient or responsible party for others to receive shared ~~care~~ services in the recipient's home;
- d) revocation by the recipient or responsible party of the shared ~~care~~ service authorization, or the shared ~~care~~ service to be provided to others in the recipient's home, or the shared ~~care~~ services to be provided outside the recipient's home;
- e) supervision of the shared personal care assistant services by the qualified professional, including the date, time of day, number of hours spent supervising the provision of share services, whether the supervision was face-to-face or another method of supervision, changes in the recipient's condition, and shared services scheduling issues and recommendations;